

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JEREMIAH YBARRA,)	CASE NO. 4:22-cv-1153
)	
)	
PETITIONER,)	JUDGE SARA LIOI
)	
vs.)	MEMORANDUM OPINION
)	AND ORDER
WARDEN GARZA,)	
)	
)	
RESPONDENT.)	

Before the Court is the Report and Recommendation (“R&R”) of a magistrate judge with respect to the above-entitled petition for writ of habeas corpus under 28 U.S.C. § 2241. (Doc. No. 11.) The R&R recommends dismissal of the petition both because petitioner failed to exhaust administrative remedies and because, in any event, he is not yet entitled to the credits he seeks.

Under 28 U.S.C. § 636(b)(1)(C):

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. [. . .]

The R&R was filed on January 23, 2023, and was sent to petitioner that same day by regular mail sent to his new address of record. As of the date of this order, no objections have been filed, no extension has been requested, and no mail has been returned as undeliverable.

The failure to file written objections to a magistrate judge’s report and recommendation constitutes a waiver of a de novo determination by the district court of an issue covered in the

report. *Thomas v. Arn*, 728 F.2d 813 (6th Cir. 1984), *aff'd*, 474 U.S. 140 (1985), *reh'g denied*, 474 U.S. 1111 (1986); *see United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

The Court has reviewed the magistrate judge's R&R and accepts the recommendation that denial of the petition without prejudice is appropriate. The Court further accepts the recommendation that no certificate of appealability is warranted.

The R&R also recommends denying petitioner's request for leave to file interrogatories. (Doc. No. 4.) Although this is in the form of a recommendation, the magistrate judge has the authority to resolve such non-dispositive matters. 28 U.S.C. § 636(b)(1)(A). Therefore, the Court construes the recommendation as an outright denial of the request for discovery and, to the extent it may be necessary, the Court adopts that order.

Accordingly, the Court denies the petition in its entirety, without prejudice, for the reasons set forth in the R&R. The Court adopts the denial of the request for discovery. Further, the Court certifies that an appeal from this decision could not be taken in good faith and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. §§ 1915(a)(3), 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

Dated: February 14, 2023



HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE